

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
ANTON J. FECHER }

Appearances:

For Appellant: Anton J. Fecher, in pro. per.

For Respondent: John R. Akin
Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Anton J. Fecher against a proposed assessment of additional personal income tax in the amount of \$399.02 for the year 1975.

Appeal of Anton J. Fecher

The sole issue is whether appellant qualified for head of household status in 1975.

During the early part of 1975, appellant and his former wife were living together. Appellant and his former wife filed **to** dissolve their marriage in May of 1975. In July of that year, appellant and his son moved into an apartment, **where they** resided together for the rest of the year. A final decree of dissolution of the marriage was not rendered by the Superior Court until January 8, **1976**. Appellant claimed head of household status when he filed his personal income tax return for 1975 naming his son as the individual qualifying him for that status. Respondent denied the claimed head of household status because he was still legally married at the end of 1975 and had not been separated from his spouse for the entire year. Respondent did, however, allow appellant a dependency credit for his son. Appellant's protest was denied and this appeal followed.

Section 17042 of the Revenue and Taxation Code provides that in order to claim head of household status, an individual must be unmarried and maintain as his home a household that is the principal place of abode of an individual who is within specified classes of relationship. In general, although a taxpayer is separated from his spouse, he is still **considered** as being married for purposes of claiming head of household status, **unless, at the close of the taxable year,** he was legally separated from his spouse under a final judgment of dissolution of marriage or separate maintenance.

(Appeal of Robert J. Evans, Cal. St. Bd. of Equal., January 6, **1977**; Appeal of Glen A. Horspool, Cal. St. Bd. of Equal., March 27, 1973.)

For years beginning on or after January 1, 1974, Revenue **and Taxation** Code section 17173 extended the benefits of head of household status to certain married individuals. This was accomplished by considering a married person as unmarried for purposes of classification as a head of household, where he lives separate and apart from his spouse during the entire year and maintains a home for a dependent child under certain conditions. Although appellant, who was still legally married on the **last day** of 1975, did maintain a home for his dependent child, he cannot qualify as a head of household because his spouse lived with him during part of 1975.

(Appeal of Charley Hurst, Cal. St. Bd. of Equal., May 4, 1978; Appeal of Lynn F. Wallace, Cal. St. Bd. of Equal., March 1, 1978; Appeal of John Mitchell, Cal. St. Bd. of Equal., January 11, 1978.)

Appeal of Anton J. Fecher

Appellant argues that he was still married at the end of 1975 only because of a court error in delaying entry of the final divorce decree until January 8, 1976. Even if appellant is correct in this regard, the fact remains that he was still legally married at the close of 1975. The statute and regulations are specific in this regard; in order to qualify for head of household status, the taxpayer must be legally separated pursuant to a final decree of dissolution at the end of the taxable year, or, if still legally married at the end of the taxable year, he must have lived separate and apart from his spouse for the entire year. Appellant simply did not satisfy the statutory requirements to claim head of household status for 1975. Accordingly, respondent's action in this matter must be sustained.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Anton J. Fecher against a proposed assessment of additional personal income tax in the amount of \$399.02 for the year 1975, be and the same is hereby sustained.

Done at Sacramento, California, this 9th day of
May , 1979, by the State Board of Equalization.

Stallman, B. B. Chairman
John C. ... Member
Ernest ... Member
Robert ... Member
M e m b e r